

**SUPREME COURT OF FLORIDA**

Case No. SC\_\_\_\_\_

CAROL ANN JONES, as Personal Representative  
of the Estate of Harry Bruce Jones,

Petitioner/Appellant,

v.

EDWARD I. GOLDEN,  
as Curator of the Estate of Katherine Jones,

Respondent/Appellee.

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**JURISDICTIONAL BRIEF OF CAROL ANN JONES**

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On Appeal From the Fourth District Court of Appeal  
Case No. 4D12-2094

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## **STATEMENT OF FACTS AND CASE**

Harry B. Jones ("Harry") died on February 16, 2007. The Estate of Harry Bruce Jones ("Estate") was opened in April 2007. On June 5, 2007, a notice to creditors was first published pursuant to § 733.702(1), Fla. Stat.

On January 14, 2009, nearly two years after Harry's death, the Guardian of Katherine E. Jones ("Katherine"), Harry's former wife, filed a pleading entitled "Statement of Claim" in the probate court. The Statement of Claim was based on a Marital Settlement Agreement entered into on November 22, 2002, as part of the couple's divorce. The Statement of Claim, which was neither preceded nor accompanied by a motion for extension of time under § 733.702(3), alleged that Katherine was entitled to payment for stocks that she was awarded during the couple's 2002 divorce proceeding.

On November 23, 2011, following Katherine's death, Edward Golden ("Golden"), the court-appointed Curator of the Estate of Katherine Jones, filed a motion to compel payment of the claim. Finally, on March 14, 2012, more than five years after Harry's death, Golden filed a petition asking the probate court to declare the Statement of Claim timely or grant an enlargement of time to file the claim.

A hearing on Golden's petition was held on April 19, 2012, and on May 2, 2012, the probate court entered the Order Striking Untimely Filed Claim ("Trial

Court Order"). The probate court ruled that the Statement of Claim was untimely under sections 733.702 and 703.710, Florida Statutes, and established case law. In support of its decision, the court cited to *Lubee v. Adams*, 77 So 3d 882 (Fla. 2d DCA 2012); *Morgenthau v. Andzel*, 26 So. 3d 628 (Fla. 1st DCA 2009) and *May v. Illinois National Insurance Co.*, 771 So. 2d 1143 (Fla. 2000), among other cases.

On appeal, the Fourth District reversed the Trial Court Order, finding that the trial court erred in determining that the claim was untimely without first determining whether the claimant was a known or reasonably ascertainable creditor. The Fourth District held that "if a known or reasonably ascertainable creditor is never served with a copy of a notice to creditors, the statute of limitations set forth in section 733.702(1), Florida Statutes, never begins to run and the creditor's claim is timely if it is filed within two years of the decedent's death." Slip Op., at 1. The Fourth District acknowledges that its decision is contrary to the decision of the Second District Court of Appeal in *Lubee v. Adams*, 77 So. 3d 882 (Fla. 2d DCA 2012) and the First District in *Morgenthau v. Estate of Andzel*, 26 So. 3d 628 (Fla. 1st DCA 2009), and certified conflict with those cases. Slip Op, at 5.

## **SUMMARY OF THE ARGUMENT**

The Fourth District held that if a known or reasonably ascertainable creditor is never served with a copy of the notice to creditors, the statute of limitations set forth in section 733.702(1), Florida Statutes, never begins to run and the creditor's claim is timely if it is filed within two years of the decedent's death. This is in express and direct conflict with the Second District's opinion in *Lubee v. Adams*, the First District's opinion in *Morgenthau v. Estate of Andzel* and this Court's opinion in *May v. Illinois National Insurance Co.*, which found that such a claim would be barred if filed more than three months after publication if the creditor was not served with a copy of the notice to creditors. This Court should accept jurisdiction and settle for all litigants the issue of whether a claimant who alleges to be a known or reasonably ascertainable creditor is required to comply with the time periods set forth in section 733.702(1), Florida Statutes, or otherwise seek an extension of time under section 733.702(3), Florida Statutes.

## ARGUMENT

**THE DECISION BELOW EXPRESSLY AND DIRECTLY CONFLICTS WITH THE DECISIONS OF THE FIRST AND SECOND DISTRICT COURTS OF APPEAL IN *MORTENTHAU V. ANDZEL* AND *LUBEE V. ADAMS*, AND THIS COURT'S DECISION IN *MAY V. ILLINOIS NATIONAL INSURANCE CO.***

This case involves the interpretation of section 733.702, Florida Statutes, and its applicability when a claim is filed more than three months after publication, unaccompanied by a request for an extension of time, but within two years of a decedent's death, by a claimant alleging to be a known or reasonably ascertainably creditor. The Fourth District holds that under these facts, section 733.702 does not apply to bar the claim, while the First and Second Districts have found that such a claim would be barred.

In *Lubee v. Adams*, the Second District found that any alleged creditor, even one who claims to be a reasonably ascertainable creditor entitled to actual notice, must comply with the provisions of § 733.702 (1), (3), Fla. Stat. 77 So. 3d at 884. The alleged creditor in *Lubee* filed a lawsuit to secure payment for services rendered to the decedent approximately 14 months after first publication of the notice to creditors. *Lubee*, 77 So. 3d at 883. The creditor did not ask the probate court for an extension of the time in which to file his claim. *Id.* Therefore, the Second District held that because the creditor was not served with a copy of the notice to creditors, he was required to file his claim in the probate proceedings

within the three-month window following publication. *Id.* at 884. Alternatively, he was required to seek an extension from the probate court under section 733.702(3). *Id.* Because the creditor failed to comply with either provision of the statute, his claim was barred as untimely and "the issue of whether or not [he] was a readily ascertainable creditor was immaterial. . . ." *Id.*

Likewise, in *Morgenthau v. Andzel*, an alleged creditor who attempted to file a claim 13 months after first publication was barred because the claim fell outside of the three-month window of section 733.702, Florida Statutes, and he did not seek an extension of that statutory period from the probate court. *Morgenthau*, 26 So. 3d at 632.

Here, the Guardian filed the Statement of Claim 19 months after first publication of the notice to creditors, which was well outside of the three-month period provided in section 733.702(1). The Statement of Claim was not accompanied by a motion for extension of time under section 733.702(3). In spite of these facts, the Fourth District held that because Golden alleged that he was a known or reasonably ascertainable creditor, section 733.702 no longer applied and his claim was timely because it was filed within two years of the decedent's death. This decision expressly and directly conflicts with the decisions in *Morgenthau* and *Lubee*.



Moreover, the Fourth District's decision conflicts with this Court's explanation of section 733.702(1), Florida Statutes, in *May v. Illinois National Insurance Company*, 771 So. 2d 1143 (Fla. 2000). In *May*, the claim of a creditor, although filed within two years of the decedent's death, was found to be untimely under section 733.702(1) because it was filed before publication of notice rather than *after* publication as required by the statute, and there was no "extension or pending request for extension in any probate court." 771 So. 2d at 1161. In reaching its conclusion, this the Court focused on the plain language of the statute, particularly the 1988 amendment to section 773.702(1), where the legislature replaced the word "from" with the word "after", so that the statute now requires a creditor to file a claim either three months "after" first publication or 30 days "after" service of notice to the creditor. § 733.702(1), Fla. Stat. (2006). By its decision, this Court expressly found that merely filing a claim at any time within two years of a decedent's death is insufficient under the plain language of the statute. *May*, 770 So. 2d at 1161. The Fourth District's decision to the contrary directly conflicts with *May*.

If the Fourth District's decision is allowed to stand, it could open the floodgates of claimants who could delay probate proceedings by simply alleging to be known or reasonably ascertainable creditors. Under the Fourth District's decision, a probate court would be obligated to hold evidentiary hearings on every

claim filed within two years of a decedent's death even if the claim is filed outside of the timeframe set forth in section 733.702(1), irrespective of whether there is request for an extension of time under section 733.702(3). In fact, if this decision stands, section 733.702(3) is rendered meaningless as long as a claim contains an allegation that the claimant is a known or reasonably ascertainable creditor. Because of the potential effect of this decision on the disposition of probate cases and in light of the clear conflict with the First and Section Districts, this issue should be addressed by the Court.

## CONCLUSION

For the foregoing reasons, the Petitioner, CAROL ANN JONES, as Personal Representative of the Estate of Harry Bruce Jones, respectfully requests that this Court accept jurisdiction based upon the certified conflict of decisions.

Respectfully Submitted,

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**CERTIFICATE OF SERVICE**

I **HEREBY CERTIFY** that the foregoing was served via E-Mail on William H. Glasko, Esq., Golden & Cowen, P.A., Counsel for Appellant, Palmetto Bay Law Center, 17345 South Dixie Highway, Miami, Florida 33157, bill@palmettobaylaw.com on this 9th day of January, 2014.

/s/ Robin F. Hazel  
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**CERTIFICATE OF COMPLIANCE**

Undersigned counsel certifies that TIMES NEW ROMAN, 14 pt. font, is used in this brief.

/s/ Robin F. Hazel  
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